

Application No.: 10/647,347Docket No.: 2328-050A**REMARKS**

The Examiner has indicated that the Information Disclosure Statement filed on August 26, 2003 fails to comply with 37 CFR 1.98(a)(1) in that a listing of references was not included with this filing. Attached herewith please find the PTO-1449 which applicants' file indicates was submitted with the Information Disclosure Statement filed on August 26, 2003, and was apparently lost at the PTO. This submission obviates the objection and thus renders the Information Disclosure Statement subject to consideration.

Applicants add claims 28-31 to provide them with the protection to which they are deemed entitled. Claims 28 and 29 depend, either directly or indirectly, on claim 27.

Claim 28 requires the exterior winding of claim 27 to be turned relative to another winding of the coil to assist in controlling azimuthal electric field distribution and azimuthal plasma density distribution. Claim 29 indicates the method of claim 28 is performed on a plurality of different processors of the same type having differing azimuthal electric field and plasma density distributions from processor to processor. The windings of each processor are turned relative to each other until tests indicate optimum uniform plasma distribution is achieved in each processor. Claim 30 is similar to claim 28, but depends on claim 26 and is not limited to turning. Claim 31 is similar to claim 29, but depends on claim 26 and is not limited to turning. The basis for claims 28-31 appears in the penultimate paragraph of the specification as filed.

Applicants traverse the rejections of claims 26 and 27 as being anticipated by each of Holland et al. (U.S. Patent 5,759,280), Ishii et al. (U.S. Patent No. 5,795,429), Chen et al. (U.S. Patent No. 6,164,241) and Lee et al. (U.S. Patent No. 6,288,493).

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In each rejection, the Examiner alleges that the requirement of claim 26 for positioning the exterior winding of a coil relative to the remainder of the coil so the plasma density incident on a workpiece has a predetermined relationship. In rejecting claim 27, the Examiner alleges that the positioning step of each reference includes turning the exterior winding in another coil relative to each other about the coil axis. The Examiner says the foregoing features of claim 26 can be found in Figures 1 and 2a of Holland et al. and the description thereof, which appears in column 5, line 46-column 6, line 62 and column 6, line 63-column 9, line 61; in Figure 9 and the description thereof, which appears in column 10, lines 28-46 of Ishii et al.; in Figure 6 and its description thereof, which appears in column 9, line 16-column 10, line 15 of Chen et al.; and by windings 310a, 310b, 310c, which appear in Figure 3b and are described in column 4, lines 34-63 of Lee et al. The foregoing portions of each reference have been considered but they include no mention of moving or turning an exterior winding relative to the remainder of a coil. Further, the references fail to indicate that such movement is performed to provide a predetermined, desired relationship, as alleged in the Office Action. The Office Action fails to indicate any portion of any of the four references that disclose the turning requirement of claim 27. The Examiner has provided no rationale or evidence to show that the foregoing steps are inherent in any of the four references.

Based on the foregoing, the rejection of claims 26 and 27, on the basis of anticipation, as a result of any of the four references, is improper. If the Examiner is relying on inherency, she is reminded that she has the burden of proving inherency by evidence or scientific reasoning.

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The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). To establish inherency, extrinsic evidence must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by possibilities or probabilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Roberston*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). In relying upon a theory of inherency, the Examiner must provide a basis in fact or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art.

Ex parte *Levy*, 17 U.S.P.Q.2d 1461, 1464 (B.P.A.I. 1990). Based on the foregoing, the rejection of claims 26 and 27 as being anticipated by each of Holland et al., Ishii et al., Chen et al. and/or Lee et al. is improper and must be withdrawn since none of the references disclose the steps of claims 26 and/or 27 and the Examiner has failed to offer any evidence or rationale with regard to inherency.

Newly added claims 28-31 are allowable for reasons advanced with regard to the claims upon which they depend. In addition, these claims define further features the references do not disclose.

In view of the foregoing amendments and remarks, favorable reconsideration and allowance are respectfully requested and deemed in order.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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